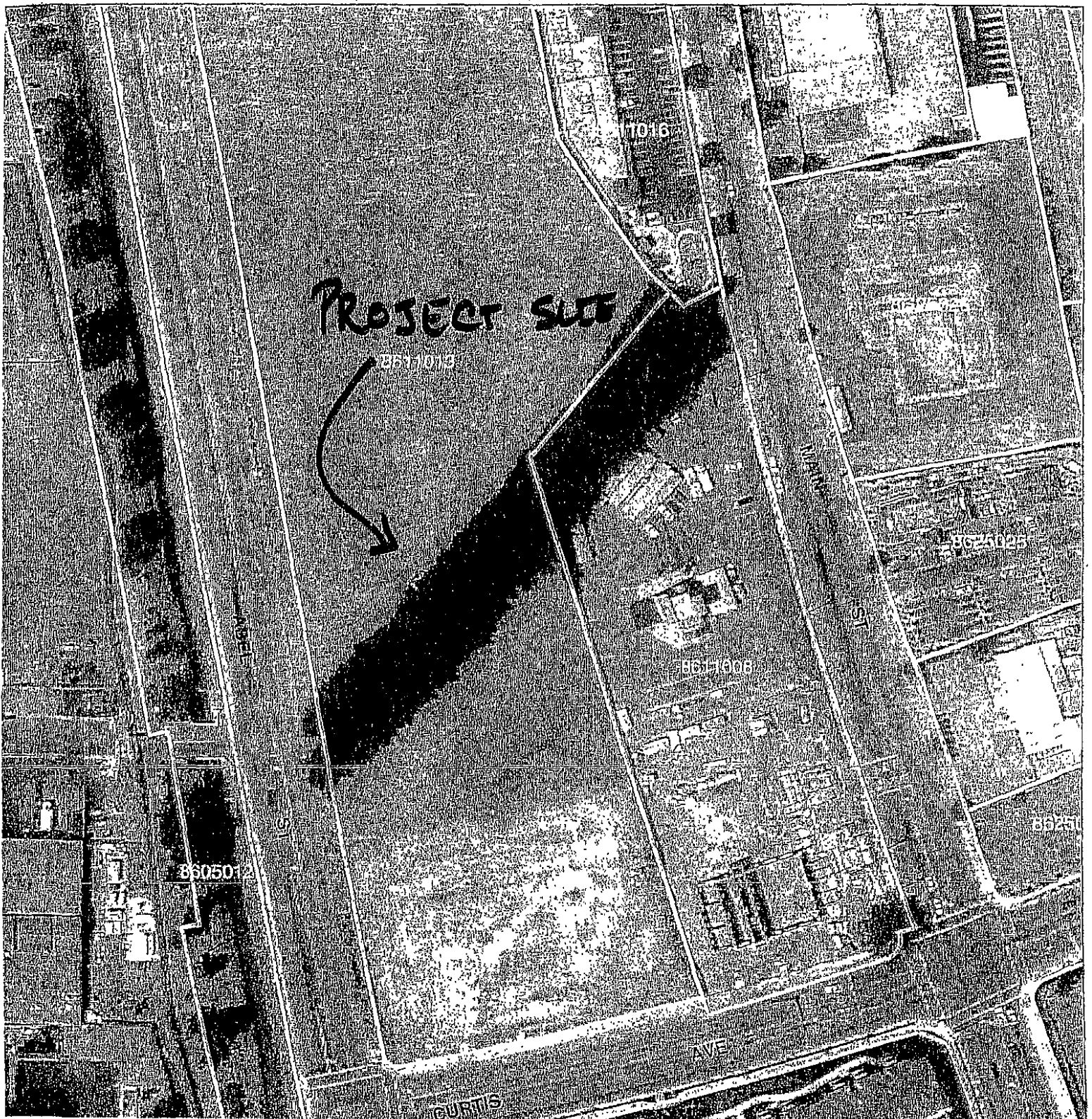


O' Toole Elms
Between South Main and South Abel Street,
north of the Main Fire Station





CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov

October 1, 2003

Cultural Resource Designation Request

Application of request to designate the two rows of Siberian elm trees, the driveway between them, and the culvert at the Main Street end of them located near the northern property line of Fire Station Number One and extending westward to Abel Street a Milpitas Cultural Resource.

Whereas these elms are named the "O'Toole Elms" after John O'Toole an early pioneer in Milpitas, who is believed to have planted them to line his driveway; and

Whereas the driveway between the O'Toole Elms once led from Main Street (then County Road Number One or Mission Road) up to the O'Toole mansion once located on county property named for the trees; and

Whereas the O'Toole Elms have existed for over 130 years in an unprotected and unmaintained state subject to the destructive forces of humans and nature for all that time; and

Whereas irreplaceable remnants of the early history of Milpitas like the O'Toole Elms property are rapidly being lost in the present planned development of the remaining open space within the city limits; and

Whereas the driveway, culvert, and the O'Toole Elms are now wholly located on property of the City of Milpitas; and

Whereas the driveway, culvert, and the O'Toole Elms meet designation criteria under Chapter 4, Title XI of the Milpitas Municipal Code in the "Cultural Resources Preservation Ordinance" of the City of Milpitas (Ord. 226 (part), 4/16/85);

Therefore, the Parks, Recreation, and Cultural Resources Commission recommends that the City Council for the City of Milpitas designate the O'Toole Elms, driveway and culvert as cultural resources to be protected, recognized, and enjoyed by all the citizens of the city.

Respectfully submitted:

Steve Munzel, Chairperson
Parks, Recreation, and Cultural Resources Commission

**UNAPPROVED MINUTES
CITY OF MILPITAS
PARKS, RECREATION AND CULTURAL RESOURCES COMMISSION**

- Minutes:** Regular Meeting of the Parks, Recreation and Cultural Resources Commission
Date of Meeting: November 3, 2003
Place of Meeting: Milpitas Community Center, 457 E. Calaveras Blvd. Conference Room
- I. Call to Order** Chairperson Munzel called the meeting to order at 7:00 PM
- II. Flag Salute** The Chair led the Commission in the Pledge of Allegiance
- III. Roll**
Commissioners Present: Gill, Krommenhock, MacKenzie, McGuire, Mohsin, Munzel, Tuason and Alternate Leonard

Commissioners Absent: Alternate Ku

City Staff Present: Bonnie Greiner, Recreation Services Manager; Kim Duncan, Junior Planner; Kerrilyn Ely, Recreation Services Supervisor; Jennifer Tagalog, Recording Secretary;

City Council Liaison Present: Council Member Polanski

Guests: Jonathan Ford and Mayor Esteves
- IV. Alternates** Alternates were not seated.
- V. Agenda** MOTION to approve the agenda for November 3, 2003, meeting as submitted.
M/S: Gill, McGuire
Ayes: (8) Gill, Krommenhock, MacKenzie, McGuire, Mohsin, Munzel, Tuason
- VI. Minutes** MOTION to approve the minutes for October 6, 2003, meeting as submitted.
M/S: Mohsin, Krommenhock
All Ayes
- VII. Citizen's Forum** Mayor Esteves expressed his appreciation to the Commission for their active involvement and attendance at the Parks, Recreation and Cultural Resources Commission meetings.

Mike Baker, Milpitas Youth Soccer President, thanked the Commission for their support and grant funding, which was used to purchase goals. He announced that on November 8, 2003, the Organization would be celebrating a Soccer Volunteer Appreciation Day. He also requested to provide a 10-minute overview of the past season at the next Commission meeting.
- VIII. Announcements/Correspondence**

Bonnie Greiner, Recreation Services Manager, announced the following:
- Veteran's Day Ceremony will be held on Tuesday, November 11, 2003, at 9:00 a.m. at Veteran's Memorial in the Civic Center Plaza.
 - Milpitas Community Band Concert will be held Friday, November 21, 2003, at 7:30 p.m. at the Community Center.
 - Tickets go on sale for Milk & Cookies with Santa on November 12th. The event will be held on Saturday, December 13, 2003, at 10 a.m. and 1 p.m.

- Tree Lighting Ceremony will be held on Monday, December 1st at 7:00 p.m. at City Hall.
- The December Parks, Recreation and Cultural Resources meeting will be held on 2nd Monday, December 8, 2003, at the Community Center Auditorium.

IX. Public Hearing

1. O'Toole Elms Public Hearing (Kim Duncan, Junior Planner)

Proposed designation of the O'Toole Elms (also known as the Elmwood trees) as "Cultural Resources Site," located between South Main and South Abel Streets, just north of the Main Fire Station.

MOTION to open the Public Hearing.

M/S: Gill, McGuire

All Ayes

Commissioner McGuire explained that Bob Burrell, would be a great resource of photos for the O'Toole Elms.

MOTION to close the Public Hearing.

M/S: Krommenhock, Mohsin

All Ayes

MOTION to move forward to proceed with adding the O'Toole Elms as "Cultural Resources Site" by forwarding this item for Planning Commission and City Council consideration.

M/S: Krommenhock, Tuason

All Ayes

X. New Business

1. Youth Sports Grant Assistance Fund – Michael DeJesus and Sara Sayasane (Kerrilyn Ely, Recreation Services Supervisor)

On June 17, 2003 the Milpitas City Council approved and appropriated \$10,000.00 for the Youth Sports Assistance Fund for the 2003-2004-budget year. Included in the Commission packet for review and consideration were two (2) Youth Sports Assistance applications:

The first Individual Youth Sports Assistance Fund Application was received from Michael DeJesus, requesting \$500.00 to offset cost of competing in the Las Vegas Baseball Academy in Las Vegas, Nevada on October 31 - November 2, 2003.

The DeJesus family was in attendance at the meeting representing the application.

This application falls within the guidelines, under the section, "Eligibility for Individuals", page 1, item #6 states; "As an event occurring where additional funding is required for a special event where participants are advancing beyond the normal spectrum of league play, hence causing additional expenses."

There was a balance of \$3,050.00 in the 2003-2004 Youth Sports Assistance Fund.

Chapter 4

**CULTURAL RESOURCES PRESERVATION
PROGRAM**

Sections:

- XI-4-1.00 General Objectives**
- XI-4-2.00 Purpose**
- XI-4-3.00 Area of Application**
- XI-4-4.00 Definitions**
- XI-4-5.00 Parks, Recreation and Cultural
Resources Commission**
- XI-4-6.00 Powers and Duties**
- XI-4-7.00 Designation Criteria**
- XI-4-8.00 Designation Procedures**
- XI-4-9.00 Permits**
- XI-4-10.00 Permit Procedure**
- XI-4-11.00 Ordinary Maintenance and
Repair**
- XI-4-12.00 Showing of Hardship**
- XI-4-13.00 Notices**
- XI-4-14.00 Appeals**
- XI-4-15.00 Rules and Regulations**
- XI-4-16.00 Violations**
- XI-4-17.00 Violation a Public Nuisance**
- XI-4-18.00 Stop Work Orders**
- XI-4-19.00 Civil Penalty**
- XI-4-20.00 Remedies Cumulative**
- XI-4-21.00 Severability**
- XI-4-22.00 Citation**

XI-4-1.00 General Objectives

Milpitas is a community with a rich historical and cultural heritage. The price of rapid growth has been the untimely alteration, demolition or removal of buildings that are a part of that history and heritage. Historic buildings and historic sites might be preserved and incorporated into the development of land if the owner and the community are aware of their value. Historic buildings and sites about to be altered, demolished, removed or eradicated may be saved (by purchase, lease, rehabilitation or otherwise) through the efforts of interested owners or community groups if there were a reasonable opportunity to do so.

This Chapter seeks to balance the needs of the community for preservation and the needs of the community for development by:

- a. The creation of a Parks, Recreation and Cultural Resources Commission;
- b. A hearing procedure allowing the inventory of and classification of community cultural resources;
- c. A permit procedure to allow guidance to owners in the preservation of valuable cultural assets; and
- d. To provide provision for a reasonable time during which cultural assets (that might otherwise be lost) can be acquired for preservation by interested individuals or organizations; and
- e. Utilizing statutes and ordinances heretofore or hereafter enacted providing for the preservation of cultural assets;
- f. The recognition of the right of a landowner to develop property on which cultural assets are located if there are no practical preservation alternatives available. (Ord. 226.2 (part), 8/4/92; Ord. 226, 4/16/85)

XI-4-2.00 Purpose

The purpose of this Chapter is to promote the public health, safety, and general welfare by providing for the identification, protection, enhancement, perpetuation, and use of improvements, buildings, structures, signs, objects, features, sites, places, and areas within the City and its unincorporated sphere of influence that reflect special elements of the City's architectural, artistic, cultural, engineering, esthetic, historical, political, social, and other heritage for the following reasons:

- a. To safeguard the City's heritage as embodied and reflected in such resources;
- b. To encourage public knowledge, understanding, and appreciation of the City's past;
- c. To foster civic and neighborhood pride and a sense of identity based on the recognition and use of cultural resources;
- d. To promote the enjoyment and use of cultural resources appropriate for the education and recreation of the people of the City;

e. To preserve diverse and harmonious architectural styles and design preferences reflecting phases of the City's history and to encourage complementary design and construction;

f. To protect historic trees and plants;

g. To enhance property values and to increase economic and financial benefits to the City and its inhabitants;

h. To protect and enhance the City's attraction to tourists and visitors (thereby stimulating business and industry);

i. To identify as early as possible and resolve conflicts between the preservation of cultural resources and alternative land uses;

j. To integrate the preservation of cultural resources and the extraction of relevant data from such resources into public and private land management and development processes;

k. To conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment. (Ord. 226.1 (A)(1), 11/7/89; Ord. 226 (part), 4/16/85)

XI-4-3.00 Area of Application

This Chapter shall apply to all cultural resources within the City of Milpitas. (Ord. 226 (part), 4/16/85)

XI-4-4.00 Definitions

4.01 "Alteration" means any exterior change or modification, through public or private action, of any cultural resource or of any property located within an historic district including, but not limited to, exterior changes to or modification of structure, architectural details or visual characteristics such as paint color and surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archeological sites or areas, and the placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, plantings and landscape accessories affecting the exterior visual qualities of the property.

4.02 "Commission" means Parks, Recreation and Cultural Resources Commission.

4.03 "Cultural resource" means improvements, buildings, structures, signs, features, sites, places, areas or other objects of scientific, aesthetic, educational, cultural, architectural, or historical significance to the citizens of the City.

4.04 "Exterior architectural feature" means the architectural elements embodying style, design, general arrangement and components of all of the outer surfaces of an improvement, including but not limited to the kind, color, and texture of the building materials and the type and style of all windows; doors, lights, signs and other fixtures appurtenant to such improvement.

4.05 "Historic district" means any area containing improvements which have a special character, historical interest or aesthetic value or which represent one or more architectural periods or styles typical of the history of the City, and which improvements constitute a distinct section of the City that has been designated an historic district pursuant to this Chapter.

4.06 "Improvement" means any building, structure, place, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

4.07 "Structure" (landmark, cultural resource, historic structure) means any improvement that has special historical, cultural, aesthetic or architectural character, interest or value as part of the development, heritage or history of the City, the State of California, or the nation and that has been designated pursuant to this Chapter.

4.08 "Site" (historic site, cultural resource site, landmark site), means a parcel or part thereof on which a cultural resource is situated and any abutting parcel or part thereof constituting part of the premises on which the cultural resource is situated, and which has been designated a designated site pursuant to this Chapter. Site includes historic trees and plants.

4.09 "Object" means a material thing of functional, aesthetic, cultural, symbolic or scientific value, usually by design or nature movable.

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4.10 "Preservation" means the identification, study, protection, restoration, rehabilitation or enhancement of cultural resources. (Ord. 226.2 (part), 8/4/92; Ord. 226 (part), 4/16/85)

XI-4-5.00 Parks, Recreation and Cultural Resources Commission

5.01 There is hereby established in the City a Parks, Recreation and Cultural Resources Commission (hereinafter referred to as the Commission) consisting of nine (9) unpaid members appointed by the Mayor and approved by the City Council.

5.02 The members of the Commission should include members of preservation related organizations such as historical societies, museums, heritage groups and civic clubs, as well as members of professional bodies such as licensed architects, attorneys, and urban planners. All members must have a demonstrated interest in and knowledge of the cultural heritage of the City.

5.03 The appointment of the members of the Commission shall be for a three (3) year term.

5.04 In the event of a vacancy occurring during the term of a member of the Commission, the Mayor shall make an interim appointment to fill the unexpired term of such member subject to the approval of the City Council. (Ord. 226.2 (part), 8/4/92; Ord. 226 (part), 4/16/85)

XI-4-6.00 Powers and Duties

The Board shall have the following powers and duties:

6.01 Propose to the City Council criteria for and conduct or cause to be conducted a comprehensive survey of properties within the boundaries of the City. Publicize and periodically update survey results.

6.02 Propose specific guidelines for the designation of cultural resources including landmarks, landmark sites, and historic districts.

6.03 Maintain a local register of cultural resources including historic districts, landmark sites, and landmarks within the City.

6.04 Propose standards to be used by the City of Milpitas in reviewing applications for permits to

construct, change, alter, modify, remodel, remove, or significantly affect any cultural resource.

6.05 Recommend to the City Council the purchase of fee or less-than-fee interests in property for purposes of cultural resource preservation.

6.06 Investigate and report to the City Council on the use of various federal, State, local, or private funding sources and mechanisms available to promote cultural resource preservation in the City.

6.07 Cooperate with Local, County, State and Federal Governments in the pursuit of the objectives of historic preservation.

6.08 Keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations and decisions. All such material shall be public record.

6.09 Render advice and guidance, upon the request of the property owner or occupant, on the restoration, alteration, decoration, landscaping or maintenance of any cultural resource including landmark, landmark site, historic district, or neighboring property within public view.

6.10 Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to cultural resources.

6.11 Recommend to the City Council the official recognition of sites, buildings, landscape features, etc., located in the City's unincorporated sphere of influence as cultural resources and notify the appropriate County agencies and commissions of such recognition.

6.12 Perform any other functions that may be designated by resolution or motion of the City Council. (Ord. 226.1 (A)(2), 10/18/89; Ord. 226 (part), 4/16/85)

XI-4-7.00 Designation Criteria

For the purposes of this Chapter, an improvement may be designated a cultural resource by the City Council, and any area within the City may be designated an historic district by the City Council pursuant to Section XI-4-8.00 if it meets the following criteria:

A. It exemplifies or reflects special elements of the City's cultural, social, economic, political, aesthetic, engineering, or architectural history; or

B. It is identified with persons or events significant in local, State, or national history; or

C. It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or

D. It is representative of the notable work of a builder, designer, or architect. (Ord. 226 (part), 4/16/85)

XI-4-8.00 Designation Procedures

Cultural resources and historic districts shall be established by the City Council in the following manner:

8.01 Any person may request the designation of an improvement as a cultural resource or the designation of an historic district by submitting an application for such designation to the Commission. The Planning Commission or City Council may also initiate such proceedings on their own motion by request to the Commission.

8.02 The Commission shall conduct a study of the proposed designation as it may require as to its appropriateness for consideration. The Commission shall schedule a public hearing within sixty (60) days of the submission of the application.

8.03 No building, alteration, demolition or removal permits for any improvement, building or structure within the proposed historic district or relative to a proposed cultural resource shall be issued pending the determination by the City Council under this Section.

8.04 In the case of a proposed cultural resource and cultural resource site, notice of the date, place, time and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the improvement at least ten (10) days prior to the date of the public hearing (using the name and address of such owners as shown on the latest equalized assessment rolls) and shall be advertised once in a newspaper of general circulation in the

City at least ten (10) days prior to the date of the public hearing.

8.05 In the case of a proposed historic district, notice of the date, place, time and purpose of the hearing shall be given by first class mail to the applicant, owner and occupant of all properties within the proposed district at least ten (10) days prior to the date of the public hearing (using the name and address of such owners as shown on the latest equalized assessment rolls) and shall be advertised once at least ten (10) days prior to the date in a newspaper of general circulation in the City.

8.06 At the conclusion of the public hearing, but in no event more than thirty (30) days from the date set for the initial public hearing for the designation of a proposed cultural resource or historic district, the Commission shall recommend approval (in whole or in part) or disapproval (in whole or in part) of the application in writing.

8.07 Upon receipt of the recommendations of the Commission, the Planning Commission shall review them for the sole purpose of determining whether they are in conformance with the general plan and with any applicable specific plan (including zoning). The Planning Commission shall report thereon to the City Council within thirty (30) days of the receipt of the recommendations of the Commission. The Planning Commission may, but shall not be required to, make any additional recommendations relating to the application that it desires and that it believes are relevant to the consideration of the application by the City Council.

8.08 The City Council, within thirty (30) days of receipt of the recommendations from the Commission, shall approve the application (in whole or in part), or shall disapprove it (in whole or in part). Its decision shall be final.

8.09 Failure to send any notice by mail to any property owner where the address of such owner is not on the last equalized assessment roll shall not invalidate any proceedings in connection with the proposed designation.

8.10 The Council may establish a fee for the filing of applications under this Section. No fee

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shall be paid for applications filed by the Commission or Council.

8.11 The provisions of this Section are not subject to appeal except the application of the provisions of Subsection 8.03 in a given case.

8.12 When a recognized cultural resource is annexed to the City, it must be designated as a cultural resource in accordance with this Section before it is subject to the permit procedures of this Chapter. (Ord. 226.2 (part), 8/4/92; Ord. 226.1 (A)(3), 10/18/89; Ord. 226 (part), 4/16/85)

XI-4-9.00 Permits

It is unlawful for any person to tear down, demolish, construct, alter, remove, or relocate any improvement, or any portion thereof, which has been designated a cultural resource or cultural resource site pursuant to the provisions of this Chapter, or which lies within an historic district so designated pursuant to the provisions of this Chapter, or to alter in any manner any exterior architectural feature of such a cultural resource, cultural resource site or improvement within such an historic district, or to place, erect, alter or relocate any sign within such an historic district or on such a cultural resource or cultural resource site, without first obtaining a permit to do so in the manner provided in this Chapter, nor shall the Building Department or Planning Commission grant any permit to carry out such work on a cultural resource or cultural resource site or within an historic district, except in conformity to the provisions of this Chapter. (Ord. 226 (part), 4/16/85)

XI-4-10.00 Permit Procedure

10.01 The Chief Building Inspector shall report to the Commission any application for a permit to work on a cultural resource, cultural resource site or within an historic district which has been designated as such pursuant to the provisions of this Chapter.

10.02 The application shall be accompanied by such fees as have been established by the City and by such materials as are required by the Commission and as are reasonably necessary for the proper review of the proposed project including, but not limited to, side elevations, exterior drawings, site

plan, materials samples; photographs, historical data, illustrations of proposed grading or drainage, landscaping plans, and line drawings of adjacent properties.

10.03 Within thirty (30) days of the filing of a completed application with necessary fees and materials, the Commission shall review the same and make a recommendation to the City Council as to whether the permit shall be granted, granted conditionally or denied.

10.04 All applications must be signed by all owners of the real property on which the cultural resource is located who shall verify under penalty of perjury that the application lists the names and addresses of all owners.

10.05 In determining its recommendation, the Commission shall consider the following:

a) In the case of a designated cultural resource, whether the proposed work would detrimentally alter, destroy or adversely affect any exterior architectural feature; or

b) In the case of any property located within an historic district whether the proposed construction, removal, rehabilitation, alteration, remodeling, excavation or exterior alteration conforms to any prescriptive standards as adopted by the Commission or by the City, and does not adversely affect the character of the district; or

c) In the case of construction of a new improvement, building or structure upon a cultural resource site, whether the exterior of such improvements will not adversely affect and will be compatible with the external appearance of existing designated improvements, buildings and structures on said site.

The Commission shall make findings of facts and reasons relied on in reaching its recommendation.

10.06 Upon receipt of the recommendations of the Commission, the City Council shall hold a public hearing. Notice of said hearing shall be given at least ten (10) days before the hearing by:

a) Certified mail to the owners of the real property on which the cultural resource is located and to any other person named as an applicant on the application as said names and addresses appear on the application;

b) Certified mail to the owners of any real property located within three hundred (300) feet of the real property on which the cultural resource is located as said owners appear on the last equalized assessment roll in Santa Clara County;

c) Certified mail to the owners of any real property in any historical district in which the cultural resource is located as said names and addresses appear on the last equalized assessment roll in Santa Clara County;

d) Certified mail to any person or organization who has filed a request in writing for hearing notice with the City Clerk and Chief Building Inspector within the year immediately preceding the filing of the permit application;

e) By advertising at least one (1) time in a newspaper of general circulation in the City of Milpitas.

10.07 At the conclusion of the public hearing, the City Council may grant the permit forthwith or it may delay the granting of a permit for a period of time not to exceed one hundred eighty (180) days. In granting a permit (whether immediately or delayed), the Council shall be empowered to impose reasonable conditions to protect the character of appearance (whether interior or exterior) of the resource or of the neighborhood or district in which it is located. Provided, however, no permit shall be granted in violation of any applicable statute, ordinance, resolution, regulation, code or design criteria. Provided, further, the grant of a permit hereunder shall not constitute a waiver of any requirement of any other statute, ordinance, resolution, regulation, code or design criteria.

10.08 The purpose of the delay in the issuance of the permit is to give any person or organization an opportunity to negotiate with the owner or owners of the subject of the permit for its preservation (through purchase, lease, dedication or otherwise).

10.09 The City Council shall be empowered to extend the time during which a permit cannot be issued for one hundred eighty (180) days in addition to the period provided in Subsection 10.07 of this Chapter upon showing satisfactory to the Council that the party requesting the delay:

a) Has undertaken good-faith negotiations with the owner or owners of the subject of the permit for its preservation;

b) Will assure its preservation in accordance with the decision of the City Council;

c) Has adequate resources with which to purchase, lease or otherwise acquire the subject of the permit from the owner or owners thereof. (Ord. 226.2 (part), 8/4/92; Ord. 226 (part), 4/16/85)

XI-4-11.00 Ordinary Maintenance and Repair

Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on any property covered by this chapter that does not involve a change in design, material or external appearance thereof, nor does this Chapter prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when the Chief Building Inspector certifies that such action is required for the public safety due to an unsafe or dangerous condition which cannot be rectified through the use of the California Historical Building Code. (Ord. 226 (part), 4/16/85)

XI-4-12.00 Showing of Hardship

The City Council need not disapprove an application for permit to carry out any proposed work in an historic district, or on a cultural resource or cultural resource site, if the applicant presents clear and convincing evidence of facts demonstrating to the satisfaction of the City Council that such disapproval will work immediate and substantial hardship on the applicant because of conditions peculiar to the person seeking to carry out the proposed work, whether this be property owner, tenant or resident, or because of conditions peculiar to the particular improvement, building or structure or other feature involved, and that failure to disapprove the application will be consistent with the purposes of this Chapter. If a hardship is found to exist under this Section, the City Council shall make a written finding to that effect, and shall specify the facts and

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reasons relied upon in making such finding. (Ord. 226 (part), 4/16/85)

XI-4-13.00 Notices

Unless otherwise provided herein, all notices shall be given and all hearings shall be held pursuant to the provisions of Chapter 20 of Title I (Standard Procedures) of the Milpitas Municipal Code. (Ord. 226 (part), 4/16/85)

XI-4-14.00 Appeals

Except as otherwise provided by this Chapter and where hearing on the matter is not otherwise required to be had by the Council, any person aggrieved by a decision of any officer or department of the City of Milpitas may appeal to the City Council pursuant to the provisions of Section 5 of Chapter 20 of Title I (Standard Procedures) of the Milpitas Municipal Code. (Ord. 226 (part), 4/16/85)

XI-4-15.00 Rules and Regulations

The City Council shall have the power to establish reasonable rules and regulations consistent with the provisions of this Chapter and for the purpose of the administration and enforcement of the provisions of this Chapter. (Ord. 226 (part), 4/16/85)

XI-4-16.00 Violations

It shall be unlawful to violate any of the provisions of this Chapter. Any person violating any of the provisions of this Chapter or failing to do any act herein required of said person shall be guilty of an infraction and, upon conviction, shall be punished in accordance with the penalties set forth in Section I-1-4.09-1 of the Milpitas Municipal Code. (Ord. 226 (part), 4/16/85)

XI-4-17.00 Violation a Public Nuisance

The violation of this Chapter is hereby declared to be a public nuisance, and the Attorney for the City of Milpitas shall, upon order of the City Council, commence action or proceedings for the abatement or removal or enjoinder thereof in the manner provided by law. (Ord. 226 (part), 4/16/85)

XI-4-18.00 Stop Work Orders

Whenever any work is being done contrary to the provisions of this Chapter, the Chief Building Inspector may order the work stopped by notice in writing served on any person engaged in the doing of such work or in the causing of such work to be done; any person shall forthwith stop such work until authorized in writing by said Chief Building Inspector to proceed with such work. (Ord. 226 (part), 4/16/85)

XI-4-19.00 Civil Penalty

Every person causing or undertaking the alteration, moving or demolition of a designated cultural resource or intentionally damaging or destroying a designated cultural resource, or any part thereof, shall be subject to a civil penalty in a sum not to exceed Five Thousand Dollars (\$5,000.00) in a civil action in a court of competent jurisdiction and to reasonable attorney fees to be fixed by the Court. Any civil penalty recovered shall be used by the City of Milpitas for the protection or preservation or acquisition of cultural resources. (Ord. 226 (part), 4/16/85)

XI-4-20.00 Remedies Cumulative

See I-1-4.11

XI-4-21.00 Severability

See I-1-4.12

XI-4-22.00 Citation

This Chapter is enacted as Chapter 4, Title XI, of the Milpitas Municipal Code and may be pleaded and cited as such or as the "Cultural Resources Preservation Ordinance" of the City of Milpitas. (Ord. 226 (part), 4/16/85)

Close Public Hearing on
Item Nos. 3, 4, 5, 6 and 7
and continue Item No. 2 to
no date certain

Motion to close the public hearing on Item Nos. 3, 4, 5, 6 and 7 and continue Item No. 2
to no date certain.

M/S: Lalwani/Mohsin

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7 and 8.

- *2 **ADMINISTRATIVE ITEM NO. AD2003-16:** Proposed Cultural Resource Site designation of the 'O'Toole Elms located between South Main and South Abel Streets, north of the Main Fire Station (APN: 086-11-013 & 086-11-008). Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Continuance to coincide with the public hearing for the KB development)*
- *3 **USE PERMIT NO. UP2003-49:** A request to locate a church in the Single Family Residential District at 297 Autrey Street (APN: 026-03-029). Applicant: Living Water Baptist Church. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2358) *(Recommendation: Approval with Conditions)*
- *4 **USE PERMIT NO. UP2003-43:** Request to operate a restaurant and bakery without providing 9 required parking spaces located at 273 West Calaveras Boulevard (APN: 022-25-042). Applicant: Harry Kho. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2351) *(Recommendation: Approval with Conditions)*
- *5 **USE PERMIT NO. UP2003-47:** Request to operate a cafe, Starbuck's, with 34 indoor and 13 outdoor seats without providing thirteen (13) required parking spaces at 1487 Landess Avenue (APN: 088-35-011). Applicant: Zeden Jones. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2357) *(Recommendation: Approval with Conditions)*
- *6 **USE PERMIT NO. UP2003-50:** A request to locate a 72 seat take-out restaurant, including outdoor seating, in the Town Center District (TC) at 70 North Milpitas Boulevard (APN: 028-12-021). Applicant: Panda Restaurant Group. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2359) *(Recommendation: Approval with Conditions)*
- *7 **USE PERMIT NO. UP2003-53:** A request to permit an existing legal non-conforming restaurant, Taqueria Las Vegas, with 28 seats (20 indoor and 8 outdoor) with sale of beer and wine at 1417 North Milpitas Boulevard (APN 22-02-009). Applicant: Francisco & Jesus Rodriguez. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2361) *(Recommendation: Approval with Conditions)*
- *8 **S-ZONE APPROVAL AMENDMENT (SA2003-165):** A request to remove 457 young, diseased trees, to be replaced with 368 new trees for a net loss of 89 trees on-site at 400-940 McCarthy Boulevard (APN: 022-29-034 & 035). Applicant: LCM. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

Commissioner Lalwani welcomed the new Commissioners and noted that it is quite historic that this is the first time that the Commission has three women Commissioners that would bring more nurturing to the Commission.

Commissioner Giordano asked Chair Nitafan to follow suit with the City Council and adjourn in memory of Michael Mihalakis, who was killed in Iraq.

Chair Nitafan noted that since Cliff Williams is no longer on the Planning Commission, there is a vacancy for the 50th anniversary committee and he will be taking that position. Chair Nitafan also wished everyone a Happy New Year.

**VII.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Giordano/Galang

AYES: 7

NOES: 0

**VIII.
ELECTION OF
OFFICERS (VICE
CHAIR)**

Chair Nitafan opened up nominations for Vice Chair.

Commissioner Sandhu nominated Commissioner Lalwani for Vice Chair and Commissioner Galang seconded the nomination.

Commissioner Lalwani accepted the nomination.

There were no other nominations for Vice Chair so Commissioner Lalwani is now the Vice Chair.

**IX.
CONSENT CALENDAR
Item Nos. 3, 4, 5, 6, 7 and 8**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted a change to the recommendation of Agenda Item No. 2 (Administrative Item No. AD2003-16 -- O'toole Elms). Mr. Lindsay explained that staff has received an arborist's report addressing the current status of the elm trees, which is not good. He explained that KB homes are proposing to construct a public park within the elm growth, and staff is requesting more time to consider the report in conjunction with the proposed land use. The public will be renoticed and the item will be continued to coincide with the KB hearing.

The commission agreed to put Agenda Item No. 2 on consent with the modified recommendation.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6 and 7.

There were no speakers from the audience.

Date: December 8, 2004 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

Report Prepared by: Kim Duncan

Public Hearing: Yes ☒ No ☐

Notices Mailed On: n/a Published On: 11/25/04 Posted On: n/a

TITLE: ADMINISTRATIVE ITEM NO. P-AD2003-16

Proposal: A request to designate the O Toole Elms as a Cultural Resource Site.

Location: Between South Main and South Abel Streets, north of Fire Station No. 1

APN: 086-11-013 & 086-11-008

RECOMMENDATION: Conformance with the General Plan

Applicant: City of Milpitas, 455 East Calaveras Boulevard, CA 95035

Property Owner: City of Milpitas, 455 East Calaveras Boulevard, CA 95035
Santa Clara County, 70 West Hedding Street, San Jose, CA

Previous Action(s): S- Zone Approval, S- Zone Approval Amendment, Use Permit

General Plan Designation: Park and Open Space

Present Zoning: Public Open Space

Existing Land Use: Vacant

Agenda Sent To: Applicant & owner

Attachments: Site plan, Parks, Recreation, and Cultural Resource Commission (PRCRC) cultural resource designation request dated October 1, 2003, PRCRC November 3, 2003 meeting minutes, Cultural Resources Preservation Program ordinance, Planning Commission meeting minutes January 14, 2004

PJ: N/A

BACKGROUND

In June of 1991, the City's Cultural Resource Preservation Board recommended the O'Toole Elms as a Cultural Resource Site. The Planning Commission found the recommendation to be in conformance with the General Plan at their June 11, 1991 meeting and continued the item to the August 20, 1991 meeting for noticing requirements. At the August 20, 1991 meeting, the Planning Commission continued the item until after the Cultural Resources Master Plan was approved by the City Council. During the same time period the Cultural Resource Preservation Board merged with the Parks and Recreation Commission to become the current Parks, Recreation, and Cultural Resources Commission and the item did not continue. Subsequently, the Planning Commission approved a tree removal permit application on May 10, 2000 for the removal of eleven diseased elms in the grove. The trees were never removed and the tree removal permit approval expired.

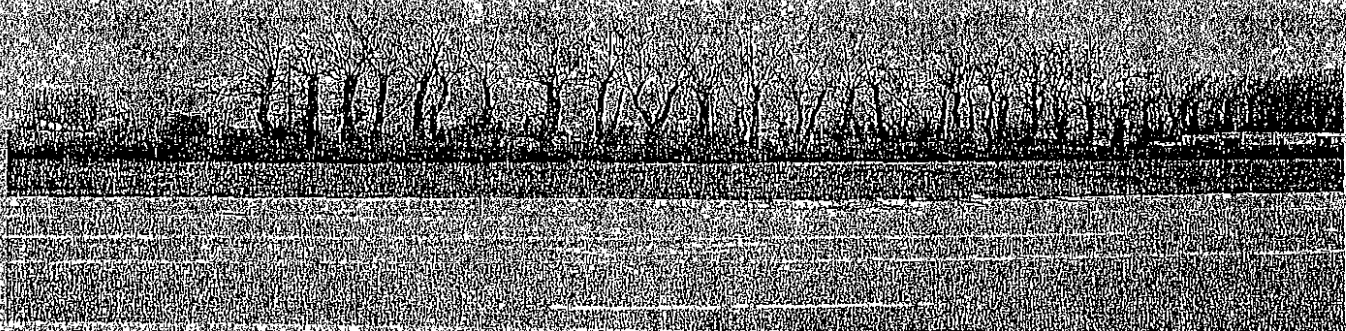
On October 8, 2003, the Parks, Recreation and Cultural Resources Commission (PRCRC) recommended approval to the City Council for the designation of the O'Toole Elms as a Cultural Resource Site. The item was agendaized to the November 3, 2003 PRCRC meeting for noticing requirements and subsequently approved.

The Planning Commission's role in the Cultural Resource Site designation process is to determine whether a proposed designation is in conformance with the General Plan. Included in the Commission's agenda packet is a copy of the city's Cultural Resources Preservation Program ordinance (MMC XI-4). Staff has also provided a historical background of the elms and the analysis for the recommendation to designate the O'Toole Elms as a Cultural Resource Site.

On January 14, 2004, the Planning Commission requested staff to reagendize this item to coincide with the KB residential development project.

THE APPLICATION

The application is submitted pursuant to Title XI, Chapter 4, Section 7.00 (Designation Criteria)-Cultural Resources Preservation Program. The Parks, Recreation and Cultural Resource Commission (PRCRC) is recommending approval to the City Council for the designation of the O'Toole Elms, driveway and culvert as a Cultural Resource Site.



View of O'Toole Elms looking north from Cirrus Avenue

HISTORICAL BACKGROUND

The O'Toole Elms, also known as the "Elmwood Trees", is a double-row planting of fifty-five (55) American Elm (*Ulmus Americana*) trees located between South Main and South Abel Streets, just north of Fire Station No. 1. The site is currently vacant land, with surrounding vacant land to the north and southwest of the site. The Fire Station is located to the southeast of the site and Elmwood Correctional facility across South Able Street on the west.

This application is for the designation of the O'Toole Elms (circa 1860) as a Cultural Resource Site. The double row of elms used to line the driveway from the Old Oakland Highway (Main Street) to a three-story, 20-room mansion John O'Toole built for his family in the 1860's. In 1883, the building and surrounding farmland was sold to Santa Clara County for use as an almshouse. The County continued the agricultural operations of the farm to supply food for the County infirmary, jail and almshouse. This grove of trees is typical of many groves planted throughout the country in colonial days. Due to Dutch Elm disease, most of the tree groves no longer exist and the O'Toole Elms are one of the last remaining stands of this size in the country.

Designation Criteria

The Cultural Preservation Program contains four criteria by which the City Council, with a recommendation from the Parks, Recreation and Cultural Resources Commission, may designate a cultural resource. Staff has listed the criteria below with an analysis.

- A. It exemplifies or reflects special elements of the City's cultural, social, economic, political, aesthetic, engineering or architectural history, or

The double row of American Elms is representative of the rich farming history of Rancho Milpitas in the 1860's. The elms used to line the driveway from the Old Oakland Highway (Main Street) to a three-story, 20-room mansion John O'Toole built on his family farm in the 1860's. The mansion and surrounding farmland was subsequently purchased in 1883 by Santa Clara County and maintained as a working farm and almshouse. Therefore, the O'Toole Elms reflect elements of the City's social, political and aesthetic history.

- B. It is identified with persons or events significant in local, State, or national history, or

The O'Toole Elms used to line the driveway from Main Street to a three-story, 20-room mansion John O'Toole built for his family in the 1860's. However, John O'Toole is not identified strongly with local history and the elms would not merit a designation based on this criteria.

- C. It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship, or

American Elm groves were typical throughout the country in colonial days and functioned as farmhouse entryways and wind breaks. Due to Dutch Elm disease, most elm tree groves no longer exist and the O'Toole Elms are one of the last remaining stands of this size in the country. Therefore, the O'Toole Elms are representative and a valuable example of a distinct period in the history of the country.

- D. It is representative of the notable work of a builder, designer, or architect.

The O'Toole Elms are not representative of the notable work of a builder, designer or architect, therefore would not merit a designation based on this criteria.

Conformance with the General Plan

The proposed Cultural Resource Site designation does not conflict with any General Plan Principles and Policies, and is consistent with Guiding Principle 4.F-G-2, which encourages undertaking efforts that promote Milpitas as a historical community and increase public awareness towards preservation. In addition, the proposed designation is consistent with Implementing Policy 4.b-I-2, which encourages preservation of remaining stands of trees.

Relationship to the Midtown Specific Plan

The proposed Cultural Resource Site designation does not conflict with any Midtown Specific Plan Goals in terms of land use, and is consistent with Policy 3.28, which encourages the establishment of a park in association with the O'Toole Elm Alley.

RECOMMENDATION

Find that the Parks, Recreation and Cultural Resources Commission's recommendation to designate the site of the O'Toole Elms as a Cultural Resource Site conforms to the City's General Plan.

Vice Chair Garcia disagreed that staff defines a balloon as a big Santa Claus and he thinks of a balloon as helium filled. Ms. Heyden said that the definition encompasses all of the descriptions that Vice Chair Garcia just mentioned.

Mr. Carrington noted that the City has a maximum height limit of balloons at 50 feet, so it would be far below the legal flying height for planes. Also the definition for balloons is any large over 3 cubic feet in size inflatable hot, cold, or helium filled balloon that is used as an advertising device for any promotional event. The task force was trying to allow residents and commercial businesses to allow them to have a 50 foot maximum height limit and that the balloons be tethered so he felt that the definition is adequate as is.

Vice Chair Garcia agreed with the staff's definition of a balloon and withdrew his request.

Motion to recommend approval to City Council adopting ordinance No. 124.27.

M/S: Garcia/Galang

AYES: 5

NOES: 0

**4. ADMINISTRATIVE
ITEM NO. AD2003-16:**
General Plan conformance of
the O'Toole Elms.
Applicant: City of Milpitas.

Kim Duncan, Junior Planner, presented Administrative Item No. AD2003-16, General Plan conformance of the proposed Cultural Resource Site designation of the O'Toole Elms located between South Main and South Abel Streets. Ms. Duncan recommended that the Commission find the designation of the O'Toole Elms in conformance with the General Plan.

Vice Chair Garcia commented that every picture he sees of the O'toole elms has no leaves and asked staff if the elms are still alive. Mr. Lindsay said the elms are in extremely poor health and he has not seen extensive foliage on the trees since his twelve years with the City. Some historic photographs of the elms give a true picture of what they used to look like and staff is excited about the opportunity of seeing a new grove there that will replicate what the elms looked like in the 1800's versus what it is looking like today.

Vice Chair Garcia asked if there is an effort to make the trees healthy and is concerned about designating the trees as a historical designation. Mr. Lindsay replied that the recommendation to move forward is a site designation. The proposal from KB homes to build a public park at the site, if that is approved by the council, would result in the removal of existing trees and the replanting of new elm trees so that the grove could be generated. Staff has several arborist reports that state the trees are beyond preservation and that they should be removed, so there are no programs in place to make the trees healthy.

Vice Chair Garcia asked staff to clarify the Commission's vote to preserve seven elm trees. Mr. Lindsay stated that the Commission is being asked to find the PRCRC recommendation to the Council, which is being asked to designate the site as a cultural resource in conformance with the general plan. The recommendation is not specifying the number of trees. The recommendation is stating that the site of the grove has significance with the City.

Chair Lalwani opened the public hearing.

Don Peoples, President of Downtown Association, commented that there are a lot of people that love the elm trees and hopefully they will be preserved in some form. He felt it is important for them to be identified as a cultural resources and that it doesn't negatively impact the other projects. His office is close by and he can see the elms. There are leaves in the spring but they fall off very quickly. He would like to see the elms be identified as a landmark.

Close the Public Hearing

Motion to close the public hearing.

M/S: Sandhu/Mohsin

AYES: 5

NOES: 0

Motion to recommend to Council to find the designation of the O'Toole Elms in conformance with the General Plan.

M/S: Garcia/Sandhu

AYES: 5

NOES: 0

**X.
ADJOURNMENT**

The meeting was adjourned at 9:08 p.m. to the next regular meeting of January 12, 2005.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Verónica Rodriguez
Recording Secretary